

At an earlier preliminary hearing held on December 10, 1996, the Administrative Law Judge ordered the respondent to provide medical treatment with Sergio Delgado, M.D. Dr. Delgado provided treatment through April 10, 1997. Claimant went on her own to Dr. Warta and first saw him on April 2, 1997, before Dr. Delgado had released claimant on April 10, 1997. At the preliminary hearing held on May 7, 1997, claimant asked the Administrative Law Judge to award treatment by Dr. Warta. The Administrative Law Judge granted that request.

Respondent asserts that the Order by the Administrative Law Judge violates the following procedural requirements found in K.S.A. 44-510(c)(1):

"If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers that are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider."

In this case, the Order designates Dr. Warta and does not allow the respondent an opportunity to provide a list of three physicians. The issue raised by the respondent here has been presented to the Appeals Board on several prior occasions. The Board has found that even if the procedure followed does not comply with the statutory requirements, the challenge to the decision by the Administrative Law Judge does not raise a jurisdictional issue and it is not subject to review on appeal at this stage of the proceedings. Briceno v. Wichita Inn West, Docket No. 211,226 (February 1997).

WHEREFORE, the Appeals Board finds that the Order by Administrative Law Judge Floyd V. Palmer, dated May 9, 1997, remains in effect as originally entered.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Heather Nye, Kansas City, MO
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director